

PT 04-5

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**AFRICAN AMERICAN IMAGES
TALENT CENTER, INC.,**

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**Docket No: 03 PT 0064
Real Estate Tax Exemption**

For 2001 Tax Year

P.I.N. 25-07-201-001, 002, 003

Cook County Parcels

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. William J. Seitz on behalf of African American Images Talent Center, Inc.; Mr. Gary Stutland, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Cook County Parcels, identified by property index numbers 25-07-201-001, 002 and 003 (hereinafter the “subject property”) should be exempt from 2001 real estate taxes under 35 ILCS 200/15-65 of the Property Tax Code, in which all property actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit, is exempted from real estate taxes.

This controversy arose as follows: On May 29, 2002, The African American Images Talent Center (hereinafter the “Center”) filed a Property Tax Exemption Complaint with the

Cook County Board of Review seeking exemption from 2001 real estate taxes for the subject property. The Board reviewed the Center's Complaint and recommended that the 2001 exemption be denied. The Department of Revenue of the State of Illinois (hereinafter the "Department") accepted the Board's recommendation in a determination dated December 22, 2002. This determination found that the subject property was not in exempt ownership and not in exempt use in 2001. Dept. Ex. No. 1. The Center filed a timely appeal of the Department's denial of exemption. On December 8, 2003, a formal administrative hearing was held with Jawanza Kunjufu, executive director of the Center, testifying. Following a careful review of the testimony and evidence, it is recommended that the Department's determination be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the subject property was not in exempt ownership or use during 2001. Tr. pp. 15-17; Dept. Ex. No. 1.
2. The Articles of Incorporation for the Center state that its purpose is "to operate specifically to foster and encourage the development of creative and artistic talents and capabilities in poor and indigent, inner-city children, through positive educational instruction." Tr. pp. 92-93; App. Ex. No. 3.
3. The Bylaws of the Center state that the corporation shall have no members, that no part of the net income or assets of the corporation shall inure to the benefit of any director, officer or private individual, and that upon dissolution, any remaining assets shall be distributed to a non-profit organization. Tr. pp. 93-94; App. Ex. No. 4.

4. The Center has been exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code since June of 1993. The Center has been exempt from retailers' occupation tax in the State of Illinois since January 2, 1998. Tr. pp. 96-97; App. Ex. Nos. 6 and 7.
5. The Center occupies a building on the subject property consisting of 27,000 square feet, evenly divided on two floors. The first floor contains a desk for a security guard, the Director's office, cubicles for staff members working on SETCLAE ("Self-esteem Through Culture Leads to Academic Excellence") curriculum development (production, editing and graphic design) and bookkeeping, two meeting areas, and a room to house inventory materials. The second floor contains an auditorium (8,000 square feet, which can be divided up into 8-10 classrooms), used for tutoring and a computer center, martial arts and poetry readings, and a gift shop/bookstore (3,000 square feet). Tr. pp. 87, 98-103, 133, 139-142; App. Ex. Nos. 8, 9 and 10.
6. The Center's unaudited Income Statement for 2001 shows the following four sources of revenue: Tuition (from tutoring and rent paid for the use of the auditorium), \$95,100 (15%); Contributions, \$10,600 (2%); Publications (divided between sales of SETCLAE curriculum to school districts and sales in the gift shop/bookstore) \$240,200 (38%); Consulting (revenue paid by school districts to the Center for Mr. Kunjufu's services) \$281,600 (45%). Total expenses were \$586,500, with the largest expense being "Salaries" (for approximately 10 employees) at \$298,000 (51%). The statement shows a "Surplus" for the year of \$41,000. Tr. pp. 103-104, 146-153, 156, 161-162; App. Ex. No. 11.

7. Jawanza Kunjufu has worked at the Center since 1988. His responsibilities include directing programs for the Center, writing curriculum materials for SETCLAE, and presenting the curriculum, nationally and locally. Tr. p. 69.
8. SETCLAE attempts to enhance self-esteem for students, empower parents to become more involved in their children's education, and raise teachers' expectations for the children. SETCLAE materials are available for grades K-12 at different price levels. For example, at the elementary level (grades K through 8) 105 children's books, 20 adult books and 2 videos cost \$995. A Home/Parental version, including 6 children's books and 5 adult books, is available for \$159.95. Self-esteem tests, workbooks, SETCLAE songs and a songbook are available at extra cost. The curriculum includes teacher's manuals, pre and post-tests, lesson plans, videos, posters, certificates and awards. SETCLAE materials are also sold in the gift shop/bookstore on the subject property. Tr. pp. 73-74, 118, 120-121, 132; App. Ex. Nos. 19 and 21.
9. Mr. Kunjufu has personally written 22 books, which are sold to individuals and schools in the gift shop/bookstore on the subject property. Tr. pp. 130-133, 157.
10. A tutorial program is conducted on the subject property in the auditorium after school weekdays between 4:00 and 6:00 p.m., Saturdays and during the summers. When Mr. Kunjufu speaks at schools, he mentions that the Center has a tutorial program. Tr. pp. 76-79, 87, 115-116, 127; App. Ex. No. 17.
11. A flyer advertising the tutorial program states that classes are available in reading, math, African-American studies, science, creative writing, effective test taking, "black male/female class", computers, and martial arts. "A Saturday package of

five classes is available for \$120 a month, a savings of \$70.” “All classes are \$20 per hour. One-on-one tutoring is available at \$25 per hour.” “Upon request: we will accept your best contribution.” Tr. pp. 110-112, 143, 145-146, 155; App. Ex. No. 15.

12. Approximately 20% of the children tutored by the Center are referred by the Department of Children and Family Services (DCFS). The child’s social worker sends in a “Purchase Authorization.” DCFS is charged \$120/month for each child tutored. Tr. pp. 116-117, 153; App. Ex. No. 18.
13. A flyer advertising Mr. Kunjufu’s workshops states that teachers’ workshops address “critical issues in educating African-American achievement” and “how to improve African-American youth academic achievement.” Parents’ workshops address “developing positive self-images and discipline in Black children,” and “restoring the village, values, and commitment: Solutions for the black family.” “Call or write for fees and availability. All workshops include a book display and question and answer period.” Tr. p. 119; App. Ex. No. 20.
14. DCFS requires 27 hours of training to become licensed as a foster parent and 16 hours of training every four years to retain a license. The City Colleges of Chicago conducts the DCFS training sessions at the Center. City Colleges pay a monthly fee of \$500 to the Center for use of the auditorium. Tr. pp. 33-37.
15. The Society for the Advancement of the Vivian G. Harsh Research Collection puts on creative arts programs. The Society had a written lease agreement with the Center for a one-year period at \$150/month for space within the Center. For

some of the programs offered by the Society, the Center furnishes books to sell to participants or visitors of the program. Tr. pp. 42-49.

16. The Center donated books, including “Conspiracy to Destroy Black Boys,” to the Cook County Jail for use by the residents. Tr. pp. 38-41.

CONCLUSIONS OF LAW:

An examination of the record establishes that the Center has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the property from 2001 real estate taxes. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both: (1) owned by “institutions of public charity” and (2) “actually and exclusively used for charitable or beneficent purposes” (35 ILCS 200/15-65). Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968) (hereinafter "Korzen").

Based on the evidence and testimony presented at the evidentiary hearing, I am unable to conclude that the subject property is actually owned by the Center. The applicant admitted into evidence two documents related to ownership of the property: a deed dated February 4, 1993, showing a property transfer from American National Bank and Trust Company under trust number 9748, to Chicago Title and Trust Company, “as trustee under the provisions of a certain trust agreement dated September 29, 1992, and known as trust number 1096858” and a “City of Chicago Transaction Tax Real Property Transfer” form recorded February 25, 1993, from and to the same trusts, above, with “tax exempt corporation” typed on the form. App. Ex. Nos. 1 and 2. Both the deed and the transfer tax form include the Center’s address of “1909 West 95th Street” and contain the three P.I.N.S at issue in this case. At the hearing, Mr. Kunjufu testified that “we’re the trustee as in land trust” and that the Center had the “beneficial interest in the land trust.” Tr. pp. 90, 92.

The two documents admitted into evidence and Mr. Kunjufu’s testimony on this matter are totally inadequate for me to conclude that the Center has a beneficial interest in land trust 1096858. No trust documents showing the beneficial interest of the Center were admitted into evidence at the hearing. The charitable exemption statute requires that property sought to be exempt must be owned by an institution of public charity. 35 ILCS 200/15-65. In determining ownership of property for tax purposes, the concern is with the “realities of ownership.” City of

Chicago v. Dept. of Revenue, 147 Ill. 2d 484 (1992). The key elements of ownership are control and the rights to enjoy the benefits of the property. People v. Chicago Title & Trust Co., 75 Ill. 2d 479 (1979). Without the trust agreement admitted into evidence, I am unable to determine the “realities of ownership” in the subject property and I am unable to conclude that the subject property is actually owned by the Center.

Assuming, *arguendo*, that the Center did own the property in tax year 2001, the question becomes whether the Center qualifies as an “institution of public charity” under the terms of Korzen. In Korzen, the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes. Korzen *supra* at 157.

The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm’s on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (1965). Thus, a rigid formula is not to be applied to all fact situations but instead “courts consider and balance the guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden.” *Id.* at 469.

Based on the testimony and evidence admitted at the hearing, I have concluded that the subject property was not primarily used for charitable purposes in tax year 2001. The Center occupies a building on the subject property consisting of 27,000 square feet, evenly divided on two floors. The first floor contains a desk for a security guard, the Director's office, two meeting areas, and a room to house inventory materials. Tr. pp. 98-99. There was no specific testimony presented at the hearing as to how the security desk, Director's office, two meeting areas, and the room housing inventory materials were used for charitable purposes. The remainder of the first floor is divided into cubicles for staff members working on SETCLAE curriculum. There are eight cubicles and the cubicles are used for production, editing and graphic design of the curriculum. "In this area, editors and graphic design people work here to develop the books." Tr. p. 102.

The space on the first floor used for development of the SETCLAE curriculum cannot be considered a charitable use of the subject property. The Center's unaudited Income Statement for 2001 shows that the Center earned 38% of its revenue, \$240,200, from sales of the SETCLAE curriculum to school districts and through sales from the gift shop/bookstore located on the second floor of the subject property. Tr. p. 148. The Income Statement also shows "Cost of goods sold" of \$48,500. App. Ex. No. 11. Although this account was not explained at the evidentiary hearing, I must assume that the costs of the SETCLAE books sold are included in this account. The gross profit then from the sale of the books could be as high as \$191,700 (\$240,200 less \$48,500) before deducting salaries, advertising and other costs related to the development of the curriculum.

SETCLAE materials are available for grades K-12 at different price levels. For example, for grades K-8, 105 children's books, 20 adult books and two videos cost \$995. Self-esteem

tests, workbooks, SETCLAE songs and a songbook are available at extra cost. The curriculum also includes teacher's manuals, pre and post-tests, lesson plans, videos, posters, certificates and awards, also at extra cost. App. Ex. No. 19. With regard to the sale of books, Mr. Kunjufu testified on cross-examination that "[T]he books have a retail price, and the books are offered at a 30% discount." "But no question, the books have a retail price." "I think that [the] book ["Developing Positive Self-Images and Discipline"] sells for \$8.95, less a 30% discount. So now, we're down to about \$5 or \$6. If you were a principal ... of a school, you may choose to order 100 copies of that book for your parents and your staff. But you would definitely pay for it, right." Tr. p. 131. "... [I]f the book retails for \$10 and it cost us, let's say \$5 with all other costs, then that means that there's a profit—if it cost \$10, we sold it for \$7 and it cost us \$5 so we made \$2." Tr. p. 159.

The Center's Income Statement for 2001 shows a "Surplus" of \$41,000. App. Ex. No. 11. Although no evidence was presented at the hearing as to which specific activity at the Center generated this "Surplus," I must assume that some of the "Surplus" is generated from sales of the SETCLAE curriculum. As Mr. Kunjufu testified, the SETCLAE materials, priced at a 30% discount, are priced to earn a profit. Tr. p. 159. Since the Center is earning a profit on the sales of the curriculum, they are in a position to make some charitable donations of the SETCLAE materials. There was no testimony or evidence at the hearing that any of the SETCLAE materials were donated or sold at more than a 30% discount to any schools or individuals that could not afford to pay for them or could not afford the 30% discounted price. Furthermore, there was no testimony or evidence at the hearing that any of the profit earned from sales of SETCLAE was used to further any charitable activities of the Center, which is one of the "distinctive characteristics" of a charitable organization according to Korzen.

Dr. Kunjufu testified that SETCLAE's goals are to enhance self-esteem for children, empower parents to become more involved in their children's education and raise teacher's expectations. Tr. pp. 73-74, 84-85. Whereas these goals obviously engender some benefit to society, there is nothing inherently charitable about using space to produce, design, publish, and market a series of books, which even if sold at a discount, are generating a profit. The Center's use of space for these activities is obviously done with a view toward profit and is more closely identified with a commercial enterprise than with a charitable organization. Based on the testimony and evidence presented at the hearing, I conclude that the space on the first floor of the subject property used for the development of the SETCLAE curriculum is not used for charitable purposes. Since there was no specific testimony as to how the remainder of the first floor was used, I conclude that the entire first floor of the subject property was not used for charitable purposes in tax year 2001.

The second floor of the subject property contains an auditorium (8,000 square feet, which can be divided up into 8-10 classrooms), used for tutoring, martial arts and poetry readings and a computer center, and a gift shop/bookstore (3,000 square feet). Tr. pp. 87, 139-142. When the auditorium is not used for tutoring, it is "available for program organizations to have meetings or seminars." Tr. p. 87. City Colleges of Chicago pay a monthly fee of \$500 to the Center for use of the auditorium to train foster parents. Tr. pp. 33-37. The Society for the Advancement of the Vivian G. Harsh Research Collection has a written lease agreement with the Center for a one-year period at \$150/month for space within the Center. Tr. pp. 42-49. Mr. Kunjufu also conducts seminars for parents and educators in the auditorium on the subject property. Parents pay \$50 and educators pay \$95, which may include a catered meal. Tr. pp. 138-139.

A flyer advertising the tutorial programs states that classes are available in reading, math, African-American studies, science, creative writing, effective test taking, “black male/female class”, computers, and martial arts. “A Saturday package of five classes is available for \$120 a month, a savings of \$70.” “All classes are \$20 per hour. One-on-one tutoring is available at \$25 per hour.” Tr. pp. 110-112, 143, 145-146, 155; App. Ex. No. 15. Mr. Kunjufu testified that he authorized the Director of the tutoring center “that if any parent comes into the building to register their child and they inform her that they cannot pay the \$120, then [the Director] is to ask them what can you pay. And if they say unfortunately I can’t pay anything, then we accept them into the program. I’ve also asked [the Director]– I’m not interested in having the parent provide us with a W-2 or any other kind of statement, then we just go by their word.” Tr. pp. 142-143. No evidence of a formal policy memorializing the above authorization was admitted into evidence. The Center’s bylaws do not contain a declaration that free or reduced cost services of any kind are available or offered at the Center. App. Ex. No. 4.

Another “distinctive characteristic” of a charitable organization considered by Korzen is whether the organization places obstacles in the way of those who need and would avail themselves of the charitable benefits dispensed by it. It must be noted that the flyer advertising tutoring at the Center states “[U]pon request, we will accept your best contribution.” App. Ex. No. 15. This statement would not necessarily lead one needing tutoring to believe that they could receive free tutoring services from the Center. In Highland Park Hospital v. Department of Revenue, 115 Ill. App. 3d 272 (2d Dist. 1987), the court found that an immediate care center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be

available to those who need it.” *Id.* at 281. In Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1st Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “Alivio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” *Id.* at 652. In this regard, the Center’s lack of advertising that free tutoring services are available places an obstacle in the way of those who cannot afford to pay even their “best contribution” for this service.

There was conflicting testimony at the evidentiary hearing as to exactly how many children had received free tutoring in tax year 2001. Applicant’s Ex. No. 12, self-servingly titled “African American Images Talent Center Contributions,” states that the “Center gives full and half scholarships to one-fourth of its students.” No list of names, or enrollment information or statistics on attendance was admitted at the hearing to corroborate this “contribution.” Applicant’s Ex. No. 13, titled “Strategic Plan” states that “[W]e presently tutor 15 students on Saturdays from 10-4 p.m. We would like to provide 35 scholarships for those unable to pay.” Mr. Kunjufu was specifically asked if “someone needed to use the services but did not have the funds to do so, what would happen in that situation.” He responded first that “our competitors like Sylvan are [charging] \$35 to \$50 an hour.” Tr. p. 85. He then stated that tutoring was available for 20 hours per week. “And ideally if they can pay, then its \$120 a month divided by 20. So is that \$6? I think that’s \$6.” Tr. p. 85.

Mr. Kunjufu’s comparison of the Center to its “competitor,” Sylvan, is certainly an indication that he views the Center as a commercial enterprise rather than a charity. Additionally, his response above evades the specific question asked which was “what would happen” if someone needed tutoring but did not have any funds, presumably even \$6, to pay for

it. Furthermore, the \$6 figure referred to by Mr. Kunjufu contradicts the flyer advertising the tutoring which states that “all classes are \$20 per hour.” Tr. p. 15. Mr. Kunjufu later testified that the Center presently tutors 15 students on Saturdays and that 7 to 12 students received scholarships in 2001. Tr. p. 107. No documentary evidence was admitted to support this.

Illinois courts have recognized that “the mere fact that an organization may charge those able to pay for the use of facilities or services of the corporation does not make such an organization ‘non-charitable’ where it does furnish such facilities or services to those unable to pay.” Illinois Hospital & Health Service v. Aurand, 58 Ill. App. 3d 79 (2nd Dist. 1978). Similarly, in Sisters of St. Francis v. Board of Review, 231 Ill. 317 (1907), the court stated that a charitable organization does not lose its exemption by reason of the fact that those patients received by it who are able to pay are required to do so, as long as all the money received by it is devoted to the general purposes of the charity. Because of the conflicting testimony and lack of documentary evidence as to students receiving free tutoring services in 2001, I am unable to conclude either that the Center dispenses charity to all who need and apply for it or that the Center devotes at least some of the “Tuition” revenue received from paying clients to those needing tutoring who are unable to pay for it.

Another consideration in determining if an organization is charitable is whether the benefits derived from the organization reduce the burdens of government. Korzen *supra* at 157. Mr. Kunjufu testified that approximately 20% of the children tutored by the Center are referred by the Illinois Department of Children and Family Services (DCFS). Tr. p. 153. “So social workers [from DCFS] who have case loads and they see that their clients are in need of academic services, they know our tutoring program exists, and they’ll send us a purchase order authorizing us to tutor their caseload.” Tr. p. 117; App. Ex. No. 18. “And as indicated earlier, our monthly

charge is \$120 a month.” Tr. p. 117. The funding for this tutoring was paid for by DCFS, a governmental agency, pursuant to a purchase requisition. DCFS’s payments to the Center for tutoring represent arm’s-length business transactions based upon the same commercial rates charged other clients. The payments under the requisitions are obviously not acts of voluntary donation and the evidence does not manifest, in any way, a lessening of the burdens of government.

Mr. Kunjufu testified that tutors are paid \$10/hour and the Director is paid \$12/hour. Tr. p. 150. With tutors being paid \$10/hour, and the Center charging \$20/hour for the classes, there is obviously a profit being made. The Center’s Income Statement for 2001 shows “Tuition” revenue of \$95,100, which includes (1) revenue from tutoring and (2) rent paid for use of the auditorium. Tr. pp. 146, 152-153; App. Ex. No. 11. There was no breakdown offered of the amounts included in “Tuition” between revenue from tutoring and revenue from rental of the auditorium by other organizations. No lease agreements for the organizations that rented the auditorium were admitted into evidence. No evidence was admitted as to how much “Tuition” revenue contributed to the “Surplus” of \$41,000 on the Center’s Income Statement for 2001. No evidence was admitted showing that any of the profit earned from “Tuition” was used to further any charitable activities of the Center. The Center’s use of the auditorium for tutoring and rentals is obviously done with a view toward profit and is more closely identified with a commercial enterprise than with a charitable organization.

In exemption cases, the applicant bears the burden of proving by “clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist. 1991). Any and all doubts that arise in an exemption proceeding, if attributable to evidentiary deficiencies, must be resolved in favor of taxation. Gas Research

Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on the testimony and evidence admitted at the evidentiary hearing, and considering the deficiencies in the evidence, I conclude that the 8,000 square feet auditorium on the second floor of the Center was not used for charitable purposes in 2001.

The second floor of the Center also contains a 3,000 square foot gift shop/bookstore. Tr. p. 133. Mr. Kunjufu has personally written about 22 books and these books are sold in the bookstore. Tr. pp. 130, 132. “The books have a retail price, and the book are offered at a 30% discount.” Tr. p. 131. The SETCLAE materials are also sold in the bookstore. Tr. p. 132.

Mr. Kunjufu was asked about the situation where “someone comes into the bookstore, loves one of your publications, thinks it’s the greatest but says, ... I can’t afford it?” He responded that if they come in and “say they have a family member in prison, then we can send it to them [the inmate] free of charge.” But if they say they want it for them personally, ... then we can give them a used book free ... [or] they could buy the new book at a 30% discount would be the other option.” Tr. pp. 144-145. “The way we’re set up, they would not receive a new book free unless they wanted it sent to a family member who’s incarcerated, and then we ship the book directly.” Tr. p. 145. Applicant’s Ex. No. 12, “African Images Talent Center Contributions” states that “we give a 30% discount on our publications. Inmates constitute 20% of our requests.” Steve Thompson, Chaplain at Cook County Jail, testified that the Center donates book to the County jail. Tr. p. 42. “There’s a couple books that [Mr. Kunjufu] would bring in large supply. There’s a “Conspiracy to Destroy Black Boys,” both 1 and 2, and he would bring and donate those books to the County jail and use for the residents of the institutions.” Tr. p. 40.

The Income Statement for the Center for 2001 shows revenue from “Publications” at \$240,200 or 38% of total revenue. App. Ex. No. 11. This revenue figure includes sales of the

SETCLAE curriculum and sales from the gift shop/bookstore. Tr. pp. 148-149. Mr. Kunjufu testified that “one-third to one-half [of the revenue] is from the bookstore, and the other one-half to two-thirds would be invoices that we receive from school districts who bought our curriculum SETCLAE.” Tr. pp. 148-149. As discussed previously in this Recommendation, the books sold in the bookstore, even if sold at a discount, are intended to and do generate a profit. The fact that some of this income is ultimately put to charitable purposes, i.e. donations of books to inmates at Cook County Jail, does not entitle the space to a charitable use exemption as it has long been held that the use to which the property is devoted is decisive rather than the use to which the income derived from the property is employed. Salvation Army v. Dep’t. of Revenue, 170 Ill. App. 3d 336 (2d Dist. 1988). When money is made by the use of a space, that money constitutes profit, no matter to what purpose that money is applied. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). I conclude that the primary purpose of the gift shop/bookstore is to generate income in furtherance of a distinctly commercial enterprise and accordingly, this space is not entitled to a charitable use exemption for tax year 2001.

The Center’s largest source of revenue, \$281,600 or 45% of total revenue is from “Consulting.” App. Ex. No. 11. This revenue is paid by school districts to the Center for Mr. Kunjufu’s services. Mr. Kunjufu testified that he spoke at schools three or four days a week, maybe twice in Chicago, the other two days out of town. “And depending on what I’m paid, all of that consulting figure would be the in-service revenue that schools pay me.” Tr. p. 149. Mr. Kunjufu provides workshops for teachers on expectations, curriculum and classroom management and workshops for parents on self-esteem and career development, and empowering them as adults to help them realize that they are the primary educators of their children.

Workshops are offered at both public and private schools. The fee for the workshops ranges from \$100 to \$500. Checks are made payable to the Center. Tr. pp. 28-30, 84-85, 134-137.

Mr. Kunjufu's consulting services provides income to the Center but there was no testimony or evidence presented at the hearing as to how this consulting, which occurs off site, contributes to a charitable use of the subject property. The charitable exemption for real property is specific to and depends on use of the subject property for charitable purposes. Additionally, one of the distinctive characteristics of a charitable organization is that the funds are derived mainly from public and private charities and the funds are held in trust for the objects and purposes in the organization's charter. Korzen *supra* at 157. Only 2% of the Center funds are comprised of donations from individuals. Tr. pp. 146-147. The remainder of the revenue, 98%, is from tuition, consulting and publication. App. Ex. No. 11. Mr. Kunjufu failed to articulate at the evidentiary hearing how the \$41,000 "Surplus" on the 2001 Income Statement is held in trust to further any charitable activities of the Center. App. Ex. No. 3. Other than the 2% of funding coming from individuals, this factor from Korzen is completely unmet by the Center.

There was testimony at the evidentiary hearing that some charitable activities occurred on the subject property. Orlando Davis, executive director of "Agape Youth Network" described Agape as a youth service organization providing mentoring and tutoring and recreational activities to at-risk youth. Agape attempts to facilitate healing between the foster child and parent. The Center allowed Agape to use the subject property to provide mentoring, tutoring, and training for the mentors as well as space to work with parents and families. Agape was not charged for the space. Tr. pp. 50-54. The Center sponsors a program called "Community of Men," a rites of passage program. The program meets at St. Sabina (78th and Racine Avenue) on Mondays from 7:00 to 9:00 p.m. during the school calendar year. The program consists of

Christian education, Black history, tutorial, mentoring, politics, recreation and a meal. The program is free and is open to males, aged seven to eighteen. The Center is responsible for organizing the mentors and the program curriculum and these activities apparently take place on the subject property although the program itself is held at St. Sabina. Tr. pp. 56-67, 111-112, 127-129; App. Ex. No. 15.

Providing space for mentoring and training and organizing the mentors and developing the curriculum for “Community of Men” may constitute charitable use of the subject property. The problem is that no exclusive area of the subject property was identified as to where these activities take place. When the property in unidentifiable portions is used both for an exempt purpose and a nonexempt one, the property will be wholly exempt only if the exempt use is primary and the nonexempt use is incidental. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist. 1991). The use of the subject property for mentoring activities and the development of the “Community of Men” curriculum must be considered incidental in comparison to the commercial activities to which the majority of the square footage of the Center is devoted.

For the above stated reasons, it is recommended that the Department’s determination which denied the exemption from 2001 real estate taxes on the grounds that the subject property was not owned or used by an “institution of public charity” should be affirmed, and Cook County Parcel, Index Numbers 25-07-201-001, 002, and 003, should not be exempt from 2001 real estate taxes.

Kenneth J. Galvin
Administrative Law Judge

Date: 2/ 4/2004